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CHARLES ELMORE CROPLEY
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IN THE
Supreme Court of the United States,

OCTOBER TERM 1937.

No. 72.

CROWN CORK & SEAL Co., Inc.,
Plaintiff-Petitioner,

VS.

FERDINAND GUTMANN & COMPANY,
Defendant-Respondent.

**REPLY-MEMORANDUM FOR DEFENDANT-
RESPONDENT ON MOTION TO AMEND
JUDGMENT.**

WILLIAM E. WARLAND,
FRANCIS H. WARLAND,
NATHANIEL L. LEEK,
Counsel for Defendant-Respondent.

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It is not necessary to discuss the authorities cited by petitioner other than to say that a careful examination of those cases shows that no one of them presents a question exactly like that presented by the record in this case.

Rule 32 of this court provides (Sub-Division 3) :

"In cases of reversal of any judgment or decree by this court, costs shall be allowed to the appellant or petitioner, *unless otherwise ordered by the court.*"

We would not file this memorandum were it not for the statements on pages 4 and 5 of petitioner-appellant's brief and the affidavit and letter annexed thereto which state that the large size of the record is due to the fact that counsel for defendant-respondent refused to agree to have less than the entire record reproduced.

It is quite true, as stated in the affidavit of Mr. Pawling that Mr. Warland desired to have the entire transcript of record reproduced. The affidavit, however, does not state that prior to the refusal, Mr. Warland had several telephone conversations not only with Mr. Pawling, but also with Mr. Darby in Washington looking toward a possible reduction

of the record. It was agreed after those conversations that the testimony of the various witnesses for both sides and many of the exhibits relevant to the two patents before this Court were so inextricably commingled with the other four patents that were not involved in the questions presented by the application for the writ, that it would be impossible to make an intelligible record before the case was reached for argument. The writ of certiorari was granted on Oct. 11, 1937. The hearing was set for the latter part of November and by agreement of counsel it was set over until December 6th.

Rule 10 of this court provides that it shall be the duty of appellant to file a praecipe indicating the portions of the record to be incorporated into the transcript. No such praecipe was filed by plaintiff-respondent nor even a letter written suggesting what, if any, portions of the record should be eliminated.

The rules provide a method by which appellant can enforce the printing of a proper record if the appellee objects to the praecipe. Equity Rule 75 as amended May 31, 1932.

It is submitted that, if counsel for petitioner-appellant had desired to have the record reduced, it was his duty to submit the praecipe required by the rules, and having failed to do so, he cannot cast upon counsel for the defendant-appellee the onus of presenting an alleged unnecessarily large record to this Court.

It is submitted that for the reasons pointed out in the motion filed by the defendant-respondent the motion should be granted.

Dated, New York, May 25th, 1938.

Respectfully submitted,

WILLIAM E. WARLAND,
FRANCIS H. WARLAND,
NATHANIEL L. LEEK,
Counsel for Defendant-Respondent.

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